IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re TAYLOR & ASSOCIATES, L.P., Debtor.	No. 95-33024 Involuntary Chapter 7

M E M O R A N D U M

APPEARANCES:

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-and-

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

Pending before the court is a motion filed by James S. Bush to reconsider partial denial of motion for summary judgment based upon newly discovered evidence. Mr. Bush asserts that Dudley W. Taylor "is barred as a matter of law by admission and judicial estoppel from seeking recovery for bad faith damages in the instant case based on certain statements made by D. Taylor under oath and filed in a prior court proceeding." Mr. Bush also contends that in light of that evidence, "[a]t the very least, this is not a case that warrants the Court's exercise of discretion in favor of allowing a claim for bad faith." For the following reasons, the motion to reconsider will be denied. This is a core proceeding. *See* 28 U.S.C. § 157(b)(A) and (O).

II.

With the exception of Dudley W. Taylor's claim that petitioning creditor James S. Bush failed to adequately investigate the existence of Taylor and Associates, L.P. prior to initiating this involuntary case, Mr. Taylor's motion for an award of damages pursuant to 11 U.S.C. § 303(i)(2) and his request to tax the petitioning creditors for all administrative expenses was denied by order entered May 14, 2001. The present motion, filed on May 30, 2001, is based on evidence discovered after entry of the May 14 order which indicates that "Dudley W.

Taylor took the position that it would be beneficial for him personally if the bankruptcy proceeding initiated by Petitioner were allowed to go forward and that he did not pursue the dismissal of the involuntary petition on his own behalf but instead on behalf of at least six of his clients whom he billed for those services." Because of this evidence, Mr. Bush urges the court to find that "Dudley W. Taylor is barred as a matter of law from seeking damages under § 303(i)(2) based on his admission that he was not injured by the filing of the Involuntary Petition and that D. Taylor is judicially estopped as a matter of law from seeking recovery for bad faith damages based on statements he made under oath and evidence he submitted for proof in *Dudley W. Taylor and Taylor & Fleishman, a Partnership v. Kenneth M. Seaton d/b/a KMS Enterprises*, Knox County Circuit Court."

"Federal standards govern the application of judicial estoppel in federal court." *Warda v. Commissioner*, 15 F.3d 533, 538 n.4 (6th Cir. 1994). In its most recent pronouncement on the issue, the Sixth Circuit Court of Appeals stated the following:

> The doctrine of judicial estoppel "forbids a party 'from taking a position inconsistent with one successfully and unequivocally asserted by the same party in a prior proceeding.'" *Teledyne Indus., Inc. v. Nat'l Labor Relations Bd.*, 911 F.2d 1214, 1217 (6th

> Cir. 1990). Courts apply judicial estoppel in order to "preserve the integrity of the courts by preventing a party from abusing the judicial process through cynical games-manship, achieving success on one position, then arguing the opposing to suit an exigency of the moment." *Teledyne*, 911 F.2d at 1218. The doctrine applies only when a party shows that his opponent: (1) took a contrary position; (2) under oath in a prior proceeding; and (3) the prior position was accepted by the court." *Id*.

Griffith v. Wal-Mart Stores, Inc., 135 F.3d 376, 380 (6th Cir. 1998). Furthermore, judicial estoppel is to be "applied with caution to avoid impinging on the truth-seeking function of the court because the doctrine precludes a contradictory position without examining the truth of either statement." *Id*. at 382 (quoting *Teledyne*, 911 F.2d at 1218).

After consideration of the newly discovered evidence, it does appear that the first two requirements for application of the judicial estoppel doctrine have been met. Mr. Taylor's statements in the state court action that the bankruptcy would be beneficial to him personally and that he billed clients for his work in opposing the bankruptcy are contrary to his current assertion that he was damaged by the bankruptcy filing. Additionally, these statements were expressed by Mr. Taylor in an affidavit, which of course is "under oath." However, the court is unable to ascertain from the evidence submitted that the third requirement for judicial estoppel has been met: that

"the prior position was accepted by the court." The evidence indicates that Mr. Taylor submitted the affidavit in state court in opposition to a motion filed by Mr. Seaton to set aside a judgment previously obtained by Mr. Taylor against Mr. Seaton. The court has no evidence before it of the outcome of that motion. Absent evidence that Mr. Taylor was successful in opposing the motion through the use of his affidavit or that the state court "accepted" his prior inconsistent position, the doctrine of judicial estoppel as applied in federal court does not prohibit what appears to be Mr. Taylor's contrary representations in this case. As explained by the Sixth Circuit:

> The requirement that the position be successfully asserted means that the party must have been successful in getting the first court to accept the position. Absent judicial acceptance of the inconsistent position, application of the rule is unwarranted because no risk of inconsistent results exists. Thus, the integrity of the judicial process is unaffected; the perception that either the first or the second court was misled is not present.

Coal Resources, Inc. v. Gulf & Western Indus., Inc., 865 F.2d 761, 773 (6th Cir. 1989)(quoting *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 598 (6th Cir. 1982)). Accordingly, Mr. Bush's request that the doctrine of judicial estoppel be invoked must be denied.

The court next turns to Mr. Bush's assertion that Mr. Taylor

"is barred as a matter of law from seeking damages under § 303(i)(2) based on his admission that he was not injured by the filing of the Involuntary Petition." While Mr. Bush may be able to establish such an admission at the evidentiary hearing on this matter, the record as it presently exists includes Mr. Taylor's affidavit filed in response to Mr. Bush's motion to reconsider wherein Mr. Taylor recites that "I personally incurred substantial damages as a result of this bankruptcy proceeding, notwithstanding the fact that I billed the six clients for legal services devoted to opposing the bankruptcy." In light of this statement, the court is unable to conclude as a matter of law that Mr. Taylor has sustained no damages.

Mr. Bush's last basis for his motion to reconsider is that the newly discovered evidence warrants against this court exercising its discretion in favor of Mr. Taylor. While the evidence presented by Mr. Bush casts doubt upon Mr. Taylor's own clean hands in this matter, the court must consider the totality of the circumstances in evaluating whether an involuntary petition has been filed in bad faith, as this court previously noted in its memorandum opinion filed on May 14, 2001. Absent an examination of all the relevant circumstances, any refusal by this court at this time to exercise its discretion in favor of Mr. Taylor would be premature and inappropriate.

III.

In light of the foregoing, the court will enter an order denying the motion filed by James S. Bush to reconsider this court's partial denial of summary judgment.

FILED: July 23, 2001

BY THE COURT

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE